In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 64

UNITED STATES OF AMERICA

v.

DAVID THOMAS HEALY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

REPLY BRIEF FOR THE UNITED STATES

1. At the jurisdictional stage, respondent moved to dismiss the government's appeal on the ground that it was untimely. Although this Court noted probable jurisdiction without requesting argument on the jurisdictional issue, respondent again argues the issue of timeliness (Br. 1–6). In our view, there is no merit to the contention. The district court dismissed both counts of the indictment on September 17, 1962, and a petition for rehearing was filed on October 17, 1962. The order denying this petition was filed on November 8, 1962. The notice of appeal, filed on December 5, 1962, within 30 days after the denial of the petition for rehearing, was timely. See Rule 37(a)(2), F.R. Crim. P.; Supreme Court Rule 11(2).

706-255—63

It has long been settled in the federal courts that when a district court entertains a petition for rehearing, the judgment of the court as originally entered does not become final until the denial of rehearing, and the time to appeal runs from the date of denial of rehearing. *Wayne Gas Co.* v. *Owens Co.*, 300 U.S. 131, 137–138; *Bowman* v. *Loperena*, 311 U.S. 262, 264–266; *Morse* v. *United States*, 270 U.S. 151, 153, 154; *United States* v. *Ellicott*, 223 U.S. 524, 539; *Saginaw Broadcasting Co.* v. *Federal Communications Commission*, 96 F. 2d 554, 558 (C.A.D.C.), certiorari denied, 305 U.S. 613; *Suggs* v. *Mutual Ben. Health & Accident Ass'n.*, 115 F. 2d 80, 82 (C.A. 10); *Babler* v. *United States*, 137 F. 2d 98, 99 (C.A. 8). There is no reason whatever to suggest that this rule, and the reasoning upon which it is based, do not apply to criminal, as well as to civil, cases. Thus, in *Craig* v. *United States*, 298 U.S. 637, a criminal case, the defendant had applied for certiorari while he had a petition for rehearing pending in the court of appeals. This Court denied the writ "upon the ground that [the petition] is premature, without prejudice to a renewal of the application within thirty days after action by the Circuit Court of Appeals on the petition for rehearing." See, to similar effect, *Forman* v. *United States*, 361 U.S. 416, 426.[1]

[1] The rule does not apply, to be sure, when the petition for rehearing is filed after the time for appeal has expired, merely for the purpose of extending the time for appeal, *Wayne Gas Co.* v. *Owens Co.*, 300 U.S. 131, 136. That exception, however, has no application here. The government's petition for rehearing was filed within the time for appeal (within 30 days of the

2. Petitioner contends that since the indictment alleges an unlawful transportation for a lawful purpose, *i.e.*, transportation from Florida to Cuba, the Federal Kidnaping Act is inapplicable (Br. 9–11). But the holding of a person against his will—and, no less, the transportation of one held captive—is a wrong in itself, whatever the purpose of the transportation. Certainly the captive in this case had no intention to go to Cuba. Under *Gooch* v. *United States*, 297 U.S. 124, 128, if the person transported in interstate commerce has been held for any purpose which involves a benefit to the captor, he is a person "held for ransom or reward or otherwise." That is this case. Petitioner recognizes that *Wheatley* v. *United States*, 159 F. 2d 599 (C.A. 4), and *Bearden* v. *United States*, 304 F. 2d 532 (C.A. 5), involved kidnaping for purposes which were not specifically illegal, but argues that those cases are not controlling because the convictions were reversed.[2] The reversals, however, were upon other grounds—grounds which did not touch the ruling that transportation of a person held against his will for a purpose not specifically illegal is within the purview of the Federal Kidnaping Act.

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original judgment) for the purpose of calling to the attention of the district court matters which had been overlooked.

In *United States* v. *Quon*, 241 F. 2d 161 (C.A. 2), certiorari denied, 354 U.S. 913, an untimely appeal from the denial of a motion for modification of sentence had been discontinued and a motion, in effect for reargument, had been made in the district court. It was held that in such circumstances, the denial of the motion for reargument did not extend the time for appealing from the original order.

[2] After this Court remanded the *Bearden* case for reargument, 372 U.S. 252, the court of appeals reversed for error in the instructions.

3. The fact that various Congressmen spoke about acts of piracy being committed against commercial airliners (see respondent's brief, 12–13) does not show that the Act, which unquestionably does apply to the piracy of commercial airliners, does not also cover private aircraft. The government's argument on this point is set out in our main brief at pp. 12–17.

Respectfully submitted.

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